

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 72 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE PRADIP KUMAR SARKAR

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

TRIBHOVANDAS GOPALBHAI PATEL

Versus

DABHOI MUNICIPALITY

Appearance:

MR CL SONI for Petitioner

MR JAYESH M PATEL for Respondent No. 1

RULE SERVED for Respondent No. 3

CORAM : MR.JUSTICE PRADIP KUMAR SARKAR

Date of decision: 27/04/2000

ORAL JUDGEMENT

I have heard Mr. C.L.Soni, learned counsel appearing on behalf of the petitioner and Mr. T.J.Patel, learned counsel for Mr. Jitendra Patel, learned counsel appearing on behalf of respondent no.1. The present petition has been filed by the petitioner praying for a

direction to the respondent Municipality to promote the petitioner as an Internal Auditor. It is submitted by Mr. Soni, learned counsel appearing on behalf of the petitioner that the petitioner is a qualified Accountant working under the respondent no.1 Municipality and as and when the post of Internal Accountant has fallen vacant, the petitioner has discharged his duties of Internal Auditor. Learned counsel submitted that though the petitioner has requisite qualifications and experience, he is not being promoted to the post of Internal Auditor. It is also submitted by the learned counsel for the petitioner that the respondent -Municipality is delaying the promotion in the post of Internal Auditor to appoint the person of their choice. It is also submitted by Mr. Soni that the respondent no.3 was initially appointed as Sweeper, and thereafter, he has been promoted in the post of Drainage Line Inspector and now the respondent -Municipality is trying to promote another person of its choice to the post of Internal Auditor. Having been apprehensive of such a decision from the respondent -Municipality, the petitioner has filed the present petition and prayed for interim order for restraining the respondent -Municipality from filling up the post of Internal Auditor. Accordingly, interim order was passed on 8th January, 1988 restraining the respondent -Municipality from filling up the post. In accordance with the interim order, the post of Internal Auditor has not yet been filled up. Learned counsel for the petitioner submitted that the Municipality has certain rules for filling up the promotional post and these rules are to be strictly followed. So there is no option before the respondent -Municipality other than to appoint the petitioner for promotion to the post of Internal Auditor. Learned counsel, therefore, submitted that since the Municipality has taken a decision to fill up the post of Internal Auditor by promotion, the respondent -Municipality may be directed to promote the petitioner in the post of Internal Auditor.

I cannot agree with the submission of learned counsel for the petitioner because till now the post has not been filled up and the Selection Committee has not been constituted, and therefore, it is not clear when the post will be filled up by the Municipality. It is exclusively a discretion of the Executive Authority i.e. Municipality to take decision when the post will be filled up. But once a decision is taken to fill up the post, then the same must be filled up in accordance with rules.

Mr. T.J.Patel, learned counsel representing the

respondent -Municipality submitted that the Municipality has framed certain rules regarding filling up of the promotional posts and when the rules are silent, then such matters are decided by resolution of the Municipality. It is submitted by the learned counsel for the respondent -Municipality that whenever the post will be filled up, it will be filled up only in accordance with the rules and if the petitioner falls within the zone of consideration, then his case will be considered by the Municipality for promotion to the post of Internal Auditor.

The submission made by the learned counsel for the respondent -Municipality appears to be very reasonable because it has not yet been decided by the respondent Municipality, whether the post will be filled up by promotion or not. Once a decision was taken in 1987 and thereafter because of the interim order, matter has been kept at abeyance. However I am of the view that whenever the posts are to be filled up and if there are rules, then, while filling up the post, the rules should be strictly adhere to or followed. In the instant case also, if the respondent No.1 -Municipality decides to fill up the post of Internal Auditor, then it is obligatory on the part of the respondent no.1 -Municipality to fill up the post in accordance with the rules and standing instructions.

Having regard to the facts and circumstances stated above and after hearing learned counsel of the parties, I am of the view that the relief claimed by the petitioner for directing the respondent no.1 -Municipality to promote the petitioner to the post of Internal Auditor cannot be issued by this court, because no person has right to claim promotion. He has right to be considered for promotion. Accordingly, the respondents are directed that whenever the post of Internal Auditor is to be filled up, then the post must be filled up in accordance with the rules and instructions issued by the competent authority of the respondent No.1 -Municipality, and if the petitioner falls within the zone of consideration, then his case should also be considered for the post of Internal Auditor.

With the above observations and directions, the writ petition is disposed of. Rule is discharged. Interim relief granted earlier stands vacated. In the facts and circumstances of the case, I make no order as to costs.

Date: 27/4/2000. (P.K.SARKAR, J.)

ccshah